



South Carolina Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6223

MARK SANFORD
Governor

SCOTT RICHARSON
Director of Insurance

BULLETIN NUMBER 2007-02

TO: Insurance Industry

FROM: Scott H. Richardson, Director

A handwritten signature in cursive script, reading "Scott H. Richardson".

SUBJECT: Offering of COBRA Services

DATE: February 28, 2007

This bulletin clarifies whether a person may offer Comprehensive Omnibus Budget Reconciliation Act of 1986 ("COBRA"), 29 U.S.C.A. 1161 *et seq.* services, at no cost or at a reduced cost, to its clients. For the purpose of this bulletin, "person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters. *See* S.C. Code Ann. § 38-57-30 (1976).

The South Carolina Department of Insurance (Department) has become aware that certain insurance brokerage firms are offering COBRA services, at no cost or at a reduced cost, to its clients. COBRA services are administrative in nature and are not normally provided by an insurance agent or a broker.

S.C. Code Section 38-57-150 clearly provides:

- (1) No policy or annuity contract may provide for, and no person may engage in any of the following, as an inducement to the purchaser or in connection with or as reference to the policy or annuity contract, directly or indirectly:
 - (a) Paying, allowing, giving, or offering any paid employment or contract for services of any kind.

S.C. Code Section 38-57-150 specifically prohibits any person from giving, directly or indirectly, a "contract for services" as an inducement to the purchaser of insurance. The administration of COBRA benefits is separate and apart from the normal course of the business of insurance since an employer could administer the program on its own or seek another to do it at cost. Therefore, if such services are provided free of cost or at a reduced cost they would constitute unlawful inducements in violation of Section 38-57-150. Section 38-57-150 applies not only to prospective clients, but also to existing clients.

Examples of actions that are prohibited by Section 38-57-150 are as follows:

- A producer may not offer COBRA services, at no cost or at a reduced cost, to a prospective or existing client.

- A producer may not outsource the administration of COBRA for a prospective or existing client (with the fees to the outsourcing company paid for by the producer.)
- If a producer owns a third party administrator the producer may not administer COBRA benefits, at no cost or at a reduced cost, for a prospective or existing client.

A person who provides COBRA services at no cost or at a reduced cost is subject to the penalties specified in S.C. Code Ann. Section 38-2-10, which range from a fine to a revocation of a person's license.

Section 38-2-10 provides in pertinent part:

(2) If the violator is a person, other than an insurer or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall (a) fine the person in an amount not to exceed two thousand five hundred dollars, or (b) suspend or revoke the license of the person, or both. If the violation is willful, the director or his designee shall (a) fine the person in an amount not to exceed five thousand dollars, or (b) suspend or revoke the license of the person, or both.

Please direct any questions regarding this Bulletin to the attention of Jim Byrd at the address and number listed below.

Jim Byrd
Deputy Director of Market Services
South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223
Telephone: (803) 737-6143
Email: JByrd@doi.sc.gov